IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2423 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BHUPENDRASINH A PADHIYAR

Appearance:

1. Special Civil Application No. 2423 of 2005

MR HARDIK C RAWAL for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 26/04/2005

ORAL JUDGEMENT

1. Looking to the facts and circumstances of the case and with the consent of the learned advocates for

the parties, this petition is taken up for final hearing.

2. This petition is preferred against the award dated 31-1-2004 passed by the Industrial Tribunal, Vadodara in Complaint (IT) No. 1 of 1993 in Reference (IT) No. 97 of 1988, whereby the Industrial Tribunal, Vadodara quashed and set aside the order of dismissal of the respondent - workman with 40% back wages.

3. Heard the learned advocates for the parties.

4. Learned advocate for the petitioner mainly submitted that the award passed by the Industrial Tribunal, Vadodara is self-contradictory in nature especially looking to paragraphs No.11 and 15 of the impugned award. He has further submitted that the order of dismissal of the petitioner passed by the petitioner was justifiable and therefore there was no need for the Industrial Tribunal, Vadodara to interfere with the said order. In fact, Reference (IT) No. 97 of 1988 was already disposed of vide award dated 7-6-1999 against which Special Civil Application No. 933 of 2000 was preferred by the petitioner and the said petition was partly allowed by this Court vide order dated 1-5-2000. This aspect of the matter has not been appreciated by the Industrial Tribunal, Vadodara.

5. Learned advocate for the petitioner submitted that in fact initially when the respondent - workman was dismissed, Reference was preferred and thereafter the respondent - workman was reinstated in service and thereafter again the respondent - workman committed another misconduct for which against services of the respondent - workman were brought to an end. Original Reference (IT) No. 97 of 1988 was already decided. This aspect of the matter was not brought to the notice of the Industrial Tribunal, Vadodara by the respondent workman. Looking to paragraph No. 15 of the impugned award, the Industrial Tribunal, Vadodara has decided the Reference as if it is an ex-parte award. But in fact, the petitioner's presence has already been recorded in paragraph No. 11 of the impugned award. Self-contradiction is fatal in nature. In fact, the whole award has been passed ex-parte without hearing the present petitioner. Therefore, the impugned award deserves to be quashed and set aside.

6. Heard the learned advocate for the respondent who has mainly submitted that no evidence was ever led by the petitioner before the Industrial Tribunal, Vadodara. No permission was taken by the petitioner for dismissal of

the respondent workman. There is breach of provisions of Section 33 and 33-A of the Industrial Disputes Act, 1947 and therefore the impugned award is absolutely true, correct and in consonance with the facts law and no interference of this Court is required.

7. Looking to the facts and circumstances of the case and evidence on record and having heard the learned advocate for the parties. the impugned award deserves to be quashed and set aside especially for the following facts and reasons :

i. There is self-contradiction in paragraph Nos.11 and 15 of the impugned award.

ii. The Industrial Tribunal, Vadodara has not appreciated the fact that Reference (IT) No.97 of 1988 was already decided on 7-6-1999 against which Special Civil Application No. 933 of 2000 was filed before this Court and the same was partly allowed by this Court vide order dated 1-5-2000. Whereas the impugned award passed by the Industrial Tribunal, Vadodara is dated 31-1-2004 which is much later in point of time and much after the order was passed in Special Civil Application No. 933 of 2000.

iii. The averments which are referred to in the award passed by the Industrial Tribunal, Vadodara clearly show that both the parties were heard as referred to in paragraph No.11 of the impugned award coupled with the factual averments referred to in paragraph No.15 of the impugned award to the effect that nobody remained present on behalf of the present petitioner and therefore the ex-parte award has been passed. Thus, the award passed by the Industrial Tribunal suffers from serious vices.

vi. As this Court is remanding the matter to the Industrial Tribunal, Vadodara for a fresh decision, it is not necessary to go into the merits of the case. None the less, at this stage learned advocate for the petitioner submitted that after reinstatement of the respondent workman there are as many as 50 misconducts committed by the respondent workman. Even in the year 2004 there is one more misconduct committed by the respondent workman for which the petitioner has been dismised from service.

8. In view of the aforesaid aspects of the matter, I hereby quash and set aside the impugned award passed by the Industrial Tribunal, Vadodara in Complaint (IT) No.1 of 1993 in Reference (IT) No. 97 of 1988 and Industrial Tribunal, Vadodara is directed to decide afresh Complaint (IT) No. 1 of 1993 in Reference (IT) No. 97 of 1988 in accordance with law, independently and without being influenced by the aforesaid order within a period of six months from the date of receipt of writ of this Court. Rule is made absolute to the aforesaid extent, with no order as to costs.

(D.N. Patel, J.)

_/\/Satwara/